

Elder Law Update: Long-term Care Planning and Medicaid

By Remo A. Hammid, Esq.

At one point or another most of us will have to deal with the issues of caring for someone with a chronic illness. Often it is an elderly parent that requires the care, sometimes it is a disabled child, and sometimes, we are the ones that require care. In all of these situations you and your family will be faced with a variety of legal and financial issues. These issues, especially as they relate to seniors, will be the regular focus of this column which will be published the third week of every month.

Usually the most pressing issue to be dealt with is the high cost of long-term care, particularly if it involves spending time in a nursing home or rehabilitation facility. Take an average nursing home in the New York Metropolitan area where the cost, generally, ranges from \$10,000 to \$12,000 per month or \$120,000 to \$144,000 per year. Most of us do not have the resources to cover this cost. Perhaps the individual requiring care may have had the foresight to purchase a long-term care insurance policy. But even those with a long-term care policy will likely have to look elsewhere for coverage after their benefit period (usually 3 to 5

years) has expired – or sooner if the policy benefit is not broad enough to cover the actual cost of care.

The last resort for our seniors, and typically the only option, is the Medicaid program (Medicare, which is the insurance program most seniors already have, provides very limited long-term care benefits).

Medicaid, however, is a needs based program which was meant for the truly poor and has very strict eligibility criteria. To be eligible you may have no more than \$4,200 in non-exempt resources. However, it is a common misconception to think that because an individual may be holding assets above \$4,200, he or she should not bother applying.

There are, in fact, several planning techniques, depending on the type of care sought, which will allow the individual to receive Medicaid benefits. Take, for instance, an individual that needs community based benefits (i.e., home care services). The individual can reduce his or her assets below the \$4,200 level by transferring the excess resources today and be eligible for community Medicaid

benefits from the first day of the following month. Community Medicaid benefits are an incredibly effective way of helping to care for someone while keeping them at home. And the Medicaid program in its current form creates an incentive for individuals to apply for home care by not penalizing asset transfers. Many seniors fail to conduct the proper planning because they incorrectly believe that there will be a penalty of some sort.

Institutional applicants, i.e., those that require a nursing home, are subject to a look-back period of sixty months (5 years) and may have to maneuver around ineligibility rules and possible penalties. Nevertheless, there are strategies that will allow the individual to eventually obtain Medicaid benefits. A senior with an average middle class type estate cannot sustain the high cost of long-term care. At the rate of \$144,000, most individuals will spend through their assets in a few short years. Therefore, working with a qualified elder care attorney will allow the applicant to protect some portion of their assets. Generally, the earlier one conducts this type of planning the better the results.

One point of caution is that the Medicaid rules have changed significantly since the passage of the Deficit Reduction Act on February 8, 2006. For example, the look-back period for institutional care was increased to sixty months (5 years), and in some cases, the new act makes a senior's home non-exempt. Seniors must be sure to have proper guidance and counsel when carrying out Medicaid planning as the new rules have changed the way penalties are instituted.

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